

Notice of Allowability

Application No.

09/935,799

Examiner

Kathleen M. Kerr

Applicant(s)

MOCKEL ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/11/05.
2. ☒ The allowed claim(s) is/are 5, 11, 27, 32, 41 and 46-SD. *KK 3/4/05*
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
- ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
- ☒ Examiner's Amendment/Comment
- ☐ Examiner's Statement of Reasons for Allowance
- ☐ Other _____

Kathleen M Kerr
Kathleen M Kerr
Primary Examiner
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DETAILED ACTION

Application Status

1. In response to the previous Office action, a Final rejection (mailed on November 12, 2004), Applicants filed an after-final response received on February 11, 2005. Said response has been entered and cancelled Claims 12-26, 28-30, and 43. Thus, Claims 5, 8-11, 27, 32, 37-41, 44, and 46 are pending in the instant Office action and will be examined herein.

Priority

2. As previously noted, the instant application is granted the benefit of priority for the foreign application 100 42 051.6 filed in Germany on August 26, 2000 as requested in the declaration. Receipt was previously acknowledged of papers submitted under 35 U.S.C. § 119(a)-(d), which papers have been placed of record in the file. Applicants have also filed a certified translation of the German priority document.

Withdrawn - Claim Rejections - 35 U.S.C. § 112

3. Previous rejection of Claim 43 under 35 U.S.C. § 112, first paragraph, enablement, as failing to comply with the enablement requirement is withdrawn by virtue of Applicant's cancellation of said claim.

EXAMINER'S AMENDMENT

4. An examiner's amendment to the record appears below. An extension of time under 37 C.F.R. § 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on February

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28, 2005, Mr. Brett Nelson requested an extension of time for 1 MONTH(S) and authorized the Director to charge Deposit Account No. 02-4300 the required fee of \$110 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Amendments to the Claims

5. The claims have been amended as follows:

- a) Cancel Claims 8-10, 32, 37-40, and 44.
- b) Amend Claim 46 as follows:

---46. A vector comprising the isolated polynucleotide of claim 5.---

- c) Add new Claims 47-50 as follows:

--47. A method for the fermentative preparation of L-amino acid in coryneform bacteria comprising:

- a) fermenting the coryneform bacteria of Claim 27, and
- b) producing said L-amino acid.

48. A method according to Claim 47 further comprising:

- c) isolating said L-amino acid.

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49. A method according to Claim 47, wherein the L-amino acid is lysine.

50. A method according to Claim 47, wherein the shuttle vector Escherichia coli DH5alpha/mcr/pEC-K18mob2cstAexp is used.---

Examiner's Comment

6. The relevancy of WO 01/00804 (Pompejus *et al.*, see IDS) with an international filing date of June 23, 2000 (published on January 4, 2001 and, thus, not available as prior art) has been previously noted. To reiterate, SEQ ID NO:1 is not taught by Pompejus *et al.*, but a DNA encoding SEQ ID NO:2 is taught.

Since the previous Office action, USPN 6,822,084 has issued; said USPN claims priority to the three U.S. provisional applications also claimed in WO 01/00804 and discloses as noted above for Pompejus *et al.* Due to USPN 5,822,084, the Examiner's amendment above was required to cancel conflicting subject matter previously not rejected.

Conclusion

7. Claims 5, 11, 27, 32, 41, and 46-50 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M. Kerr whose telephone number is (571) 272-0931. The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr
Primary Examiner
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March 4, 2005